

Assembly Bill No. 2378

Passed the Assembly May 17, 2012

Chief Clerk of the Assembly

Passed the Senate August 23, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 19306, 19440, and 19447 of the Food and Agricultural Code, and to amend Sections 2462, 2468, and 2478 of the Vehicle Code, relating to rendering.

LEGISLATIVE COUNSEL'S DIGEST

AB 2378, Huber. Rendering: enforcement.

(1) Existing law generally regulates persons engaged in certain businesses dealing with dead animals and pet food processing, including, among others, renderers, collection center operators, pet food processors, dead animal haulers, and transporters of inedible kitchen grease. These regulatory provisions are enforced by the Department of Food and Agriculture. A person who violates these provisions is generally subject to imprisonment in a county jail for not more than one year or a fine of not more than \$1,000, or both that fine and imprisonment. A person who violates these provisions either after a prior conviction for violating these provisions or with the intent to defraud or mislead is subject to punishment in a county jail or the state prison, as specified, and a fine of not more than \$10,000, or both that imprisonment and fine. Existing law also authorizes the Secretary of Food and Agriculture to levy a civil penalty not to exceed \$1,000 for each violation against a person who violates provisions governing renderers and transporters of inedible kitchen grease and any regulations adopted pursuant to those provisions. A person against whom a civil penalty is levied may appeal the penalty to the secretary within 10 days of receiving notification of the penalty.

This bill would increase the maximum fines for the crimes described above to \$5,000 and \$15,000, respectively. The bill would increase the maximum civil penalty that may be imposed to \$5,000, and would extend the period of time in which a person may appeal the civil penalty to 20 days. The bill would authorize the secretary to file with the superior court a certified copy of the final decision that directs payment of a civil penalty, as specified.

(2) Existing law provides that any licensed renderer or collection center operator, or a registered transporter, who fails in any respect to keep the written records, as specified, or to set out in that written

record any matter required to be set out in the record, as specified, is guilty of a misdemeanor.

This bill would prescribe, for a misdemeanor violation of those provisions, a fine of not less than \$500, \$1,000, or \$2,000, for a first, 2nd, or 3rd or subsequent offense, respectively, or imprisonment in a county jail, as specified, or both that fine and imprisonment. For a 2nd or subsequent offense within a one-year period, or a 3rd or subsequent offense within a 2-year period, the bill would also authorize a court to order the defendant to stop engaging in the business for a period not to exceed 30 days, as specified. The bill would also make a related, conforming change.

(3) Existing law requires every licensed renderer to record and retain for one year records containing specified information, including the name and address of every transporter of inedible kitchen grease who has delivered to the renderer and the total amount of inedible kitchen grease purchased in each transaction. A similar provision applies to every registered transporter. Existing law provides that every licensed renderer, collection center operator, or registered transporter who destroys any written record required pursuant to these provisions within one year after making the final entry of any information required by this article, is guilty of a misdemeanor punishable by a fine, imprisonment in a county jail, or both the fine and imprisonment, as specified.

This bill would require those persons to retain, and prohibit the destruction of, those records for 2 years, rather than one year. By expanding the scope of crimes, the bill would impose a state-mandated local program.

(4) Existing law makes it unlawful for any person to engage in the transportation of inedible kitchen grease without being registered with the Department of Food and Agriculture, for any person who is not a registered transporter or licensed renderer of that product to transport that product from within the state to a place outside the state, for any person to steal, misappropriate, contaminate, or damage that product or containers of it, and for any person to take possession of the product from an unregistered transporter or to knowingly take possession of stolen inedible kitchen grease. Existing law provides that a person who violates these provisions is subject to imprisonment in the county jail for not more than one year, or a fine of not more than \$1,000, or both that imprisonment and fine. Existing law provides that if the

conviction is a 2nd or subsequent conviction or committed with intent to defraud or mislead, the person is subject to imprisonment in a county jail or state prison, as specified, or a fine of not more than \$10,000, or both that imprisonment and fine.

This bill would increase those fines to \$5,000 and \$15,000, respectively.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 19306 of the Food and Agricultural Code is amended to read:

19306. (a) Any renderer or collection center operator licensed pursuant to this article or transporter registered pursuant to Article 6.5 (commencing with Section 19310) who fails in any respect to keep the written records required by this article, or to set out in that written record any matter required by this article to be set out in the record, is guilty of a misdemeanor.

(b) Every renderer, collection center operator, or transporter who refuses, upon demand of any peace officer of this state or any employee of the department, to exhibit any written record required by this article, or who destroys that record within two years after making the final entry of any information required by this article, is guilty of a misdemeanor.

(c) Any violation of subdivision (a) or (b) is punishable as follows:

(1) For a first offense, by a fine of not less than five hundred dollars (\$500), or by imprisonment in a county jail for not more than 30 days, or by both the fine and imprisonment.

(2) For a second offense within a period of one year, by a fine of not less than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than 30 days, or by both the fine and imprisonment. In addition to any other punishment imposed pursuant to this paragraph, the court may order the defendant to

stop engaging in the business as a renderer, collection center operator, or transporter for a period not to exceed 30 days.

(3) For a third or any subsequent offense within a period of two years, by a fine of not less than two thousand dollars (\$2,000), or by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court shall order the defendant to stop engaging in the business as a renderer, collection center operator, or transporter for a period of 30 days.

SEC. 2. Section 19440 of the Food and Agricultural Code is amended to read:

19440. Any person who is found guilty of violating any of the provisions of this chapter or the rules and regulations promulgated under this chapter is subject to imprisonment in a county jail for not more than one year or a fine of not more than five thousand dollars (\$5,000), or both that imprisonment and fine; but if the violation is committed after a conviction of that person under this section has become final, or the violation is committed with intent to defraud or mislead, the person shall be subject to imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or a fine of not more than fifteen thousand dollars (\$15,000), or both that imprisonment and fine.

SEC. 3. Section 19447 of the Food and Agricultural Code is amended to read:

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the secretary may levy a civil penalty against a person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed five thousand dollars (\$5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be granted the opportunity to review the secretary's evidence and, for up to 30 days following the issuance of the notice, the opportunity to present written argument and evidence to the secretary as to why the civil penalty should not be imposed or should be reduced from the amount specified in the penalty notice. Notwithstanding Chapter 4.5 (commencing with Section 11400) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2 of the Government Code or any other

provision of law, this section does not require the department to conduct either a formal or informal hearing. The secretary instead may dispose of the matter upon review of the documentation presented.

(c) Any person upon whom a civil penalty is levied may appeal to the secretary within 20 days of the date of receiving notification of the penalty, as follows:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal.

(2) Any party, at the time of filing the appeal, or within 10 days thereafter, may present written evidence and a written argument to the secretary.

(3) The secretary may grant oral arguments upon application made at the time written arguments are made.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the secretary and the person appealing the penalty.

(5) The secretary shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal, or within 15 days of the date of oral arguments. A copy of the secretary's decision shall be delivered or mailed to the appellant.

(7) The secretary may sustain the decision, modify the decision by reducing the amount of the penalty levied, or reverse the decision.

(8) A review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) (1) If the person upon whom a penalty is levied does not file a petition for a writ of administrative mandamus, the court, upon receiving a certified copy of the department's final decision that directs payment of a civil penalty, shall enter judgment in favor of the department.

(2) After completion of the appeal procedure provided for in this section, the secretary may file a certified copy of the department's final decision that directs payment of a civil penalty

and, if applicable, any order denying a petition for a writ of administrative mandamus, with the clerk of the superior court of any county that has jurisdiction over the matter. No fees shall be charged by the clerk of the superior court for the performance of any official services required in connection with the entry of judgment pursuant to this section.

(e) Any penalties levied by the secretary pursuant to this section shall be deposited in the Department of Food and Agriculture Fund, and upon appropriation by the Legislature, shall be used for the purposes described in Section 221.

SEC. 4. Section 2462 of the Vehicle Code is amended to read:

2462. (a) In addition to any other records required to be kept pursuant to Chapter 5 (commencing with Section 19200) of Part 3 of Division 9 of the Food and Agricultural Code, every licensed renderer shall record and keep for two years, in connection with the receipt of kitchen grease that is not intended for human food, all of the following information:

(1) The name, address, and registration number of every transporter of inedible kitchen grease who has delivered that material to the renderer.

(2) The total amount of inedible kitchen grease purchased in each transaction.

(3) The date of each transaction.

(b) Every registered transporter of inedible kitchen grease shall record and maintain for two years all of the following:

(1) The name and address of each location from which the transporter obtained the inedible kitchen grease.

(2) The quantity of material received from each location.

(3) The date on which the inedible kitchen grease was obtained from each location.

SEC. 5. Section 2468 of the Vehicle Code is amended to read:

2468. (a) Any licensed renderer who fails in any respect to keep the written records required by this article, or to set out in that written record any matter required by this article to be set out in the record, is guilty of a misdemeanor.

(b) Every licensed renderer or registered transporter who refuses, upon demand of any peace officer, to exhibit any written record required by this article, or who destroys that record within two years after making the final entry of any information required by this article, is guilty of a misdemeanor.

(c) Any violation of subdivision (a) or (b) is punishable as follows:

(1) For a first offense, by a fine of not less than five hundred dollars (\$500), or by imprisonment in the county jail for not more than 30 days, or by both that fine and imprisonment.

(2) For a second offense within a period of one year, by a fine of not less than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than 30 days, or by both that fine and imprisonment. In addition to any other punishment imposed pursuant to this paragraph, the court may order the defendant to stop engaging in the business as a transporter or renderer for a period not to exceed 30 days.

(3) For a third or any subsequent offense within a period of two years, by a fine of not less than two thousand dollars (\$2,000), or by imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court shall order the defendant to stop engaging in the business as a transporter or renderer for a period of 30 days.

SEC. 6. Section 2478 of the Vehicle Code is amended to read:

2478. (a) Any person who is found guilty of violating Section 2470, 2472, 2474, or 2476, or the rules and regulations promulgated under those provisions, is subject to imprisonment in a county jail for not more than one year, or a fine of not more than five thousand dollars (\$5,000), or both that imprisonment and fine.

(b) If the conviction is a second or subsequent conviction of a violation described in subdivision (a), or the violation is committed with intent to defraud or mislead, the person is subject to imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or a fine of not more than fifteen thousand dollars (\$15,000), or both that imprisonment and fine.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2012

Governor